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Supreme Court, U.S.  
FILED  
MAY 13 1988  
JOSEPH F. SPANIO, JR.  
CLERK

NO. 87-121  
IN THE  
**Supreme Court of the United States**

October Term, 1987

RICHARD L. DUGGER, et al., Petitioners,  
  
v.  
  
AUBREY DENNIS ADAMS, Jr., Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

**JOINT APPENDIX**

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Petition For Certiorari Filed July 20, 1987  
Certiorari Granted March 7, 1988

99P



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**NOTATION**

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

Opinion of the United States District Court for the Middle District of Florida, Ocala Division, dated March 7, 1986.....A 43

Opinion of the United States Court of Appeals for the Eleventh Circuit, dated November 13, 1986.....A 1

Opinion of the United States Court of Appeals for the Eleventh Circuit, On Petition for Rehearing, dated April 23, 1987.....A 78

**CHRONOLOGICAL LIST OF RELEVANT  
DOCKET ENTRIES**

Mar. 5, 1986-Petition for Writ of Habeas Corpus, by petitioner.

Mar. 5, 1986-Response to Application for Stay of Execution and Response to Anticipated Petition for Writ of Habeas Corpus, by respondents.

Mar. 6, 1986-Motion for Stay of Execution, by petitioner.

Mar. 6, 1986-Order from the U.S. Supreme Court vacating the order of February 26, 1986. The application for stay of execution of the sentence of death presented to Justice Powell is GRANTED until March 26, 1986 or until the disposition by this Court of the petition for writ of certiorari, whichever is earlier, unless otherwise extended by the Court.

Mar. 6, 1986-Record of Hearing: oral argument on Petition for Writ of Habeas Corpus and Application for Stay of Execution before Hon. John H. Moore II. Taken under advisement by the Court.

Mar. 7, 1986-Order and opinion denying the Petition for Writ of Habeas Corpus.

Mar. 7, 1986-Judgment: pursuant to the Order and Opinion filed 3/7/86.

Nov. 13, 1986-Opinion of the Court of Appeals reversing the district court's denial of a writ of habeas corpus and ordering a new sentencing proceeding.

April 23, 1987-Revised opinion of the Court of Appeals as to Part I(A)(2),

entitled "Procedural Bar."

CIRCUIT COURT FOR LAKE  
COUNTY, FLORIDA.

STATE OF FLORIDA,

Plaintiff,

vs. CRIMINAL NO. 78-574-CF-A-01

AUBREY DENNIS ADAMS, JR.,

Defendant.

JURY TRIAL OF AUBREY DENNIS ADAMS, JR.

Filed April 25, 1979

THIS CAUSE came on for Jury Trial before the Honorable William F. Edwards, Circuit Judge, Fifth Judicial Circuit of Florida, at Tavares, Lake County, Florida, on October 12, 1978, at which time the following proceedings were had:

Appearances:

Mr. Gordon G. Oldham, Jr., State Attorney, Mr. Jeff Pfister and Mr. S. Ray Gill, Assistant State Attorneys, Fifth Judicial Circuit of Florida, Leesburg, Florida, For the Plaintiff

Mr. Reginald Black and Mr. Frederick E. Landt, III, Black, Landt & Appleget, Post Office Box 1921, Ocala, Florida 32670, For the Defendant.

Proceedings

\* \* \*

LISTINGS OF JURORS

[6-7]

All right; as your name is called, please take a seat in the Jury Box as directed by the Bailiff. Number 130.

THE CLERK: **Rebecca B. Wright.**

THE COURT: Number 121.

THE CLERK: **Percy A. Walker.**

THE COURT: Number 50.

THE CLERK: **Jacquelyn Hester.**

THE COURT: Number 73.

THE CLERK: **Emily Meinhold.**

THE COURT: Number 116.

THE CLERK: **Dolores L. Taylor.**

THE COURT: Number 6.

THE CLERK: **Leslie J. Anderson.**

THE COURT: Number 115.

THE CLERK: **Joann B. Swiderski.**

THE COURT: Number 42.

THE CLERK: **Helen Fryba.**

THE COURT: Number 63.

THE CLERK: **Arthur Langlitz.**

THE COURT: Number 111.

THE CLERK: **Robert Charles Stout, Sr.**

THE COURT: Number 51.

THE CLERK: **Reed Hollinger.**

THE COURT: Number 65.

THE CLERK: **George A. Long, Jr.**

THE COURT: Number 54. —

THE CLERK: **George Frederick Holl.**

THE COURT: Number 61.

THE CLERK: **Orville A. Kidder.**

\* \* \*

[122-123]

THE COURT: Number 47.

BY THE CLERK: **Alma L. Hart.**

THE COURT: Number 14.

BY THE CLERK: **Harrison D.**

**Broomfield, Jr.**

THE COURT: Number 1.

BY THE CLERK: **James W. Adams.**

THE COURT: Number 7.

BY THE CLERK: **Phoebe Baker.**

THE COURT: Number 24.

BY THE CLERK: **Edith Clark.**

\* \* \*

[149-150]

MR. LANDT: I'd like to inquire of each of you that so we will make the rounds.

MR. Bloomfield, do you know anyone on this panel well?

BY THE JUROR: No, I don't know any of them.

MR. LANDT: Thank you. Mrs. Hart, do you know any of the panel members?

BY THE JUROR: No.

MR. LANDT: How about you, Mr. Walker?

BY THE JUROR: No.

MR. LANDT: Mrs. Wright?

BY THE JUROR: No, sir.

MR. LANDT: Mr. Anderson?

BY THE JUROR: No, sir.

MR. LANDT: **Mrs. Swiderski?**

BY THE JUROR: No.

MR. LANDT: **Mrs. Baker?**

BY THE JUROR: No.

MR. LANDT: **Ms. Clark?**

BY THE JUROR: No.

MR. LANDT: **Mr. Stout?**

BY THE JUROR: No.

MR. LANDT: **Mr. Kidder?**

BY THE JUROR: No.

MR. LANDT: **Mr. Holl?**

BY THE JUROR: No.

MR. LANDT: **Mr. Long?**

BY THE JUROR: No.

MR. LANDT: **Mr. Hollinger**, do you  
know any of the jury panel members?

BY THE JUROR: No.

MR. LANDT: Thank you. **Mr. Adams**,...

\* \* \*

[221-222]

THE COURT: Number 49.

BY THE CLERK: **Clarence Henson**.



THE COURT: Number 94.

BY THE CLERK: **Lawrence Reilly.**

THE COURT: Number 59.

BY THE CLERK: **Elizabeth Juselius.**

\* \* \*

[240]

THE COURT: All right; we'll stop at this point and go ahead and pull two others. You may let her out.

(Thereupon the prospective Juror **Mrs. Wilma Ferguson** left the Courtroom).

THE COURT: Number 90.

BY THE CLERK: **William A. Read.**

THE COURT: Number 89.

BY THE CLERK: **Hubert Jackson Rayburn.**

\* \* \*

[286]

THE COURT: **Mr. Read**, you may step down and you're excused from your subpoena and you will not have to come back to Court unless subpoenaed later on. Thank

you very much for coming.

MR. OLDHAM: May we approach the bench, Your Honor?

THE COURT: Come forward.

(Thereupon Counsel for the respective parties to the cause approached the bench and conferred with the Court briefly, out of the hearing of the Court Reporter and the prospective Jurors).

THE COURT: Number 64.

BY THE CLERK: **Linda Carol Locke.**

THE COURT: Number 13.

BY THE CLERK: **Raymond Wayne Bronson.**

THE COURT: Number 15.

BY THE CLERK: **Albert L. Brown.**

\* \* \*

[323-325]

(Thereupon the following proceedings were held within the hearing of the prospective Jurors):

THE COURT: Now, ladies and gentlemen of the prospective Jury, we've been into

this now for -- all day yesterday and almost half of today. Some of you have not been questioned for the last -- say the last seven or eight hours that you've had to sit here and before we get down to the point of considering accepting this Jury, I want to ask a general question as to each one of you individually and I would like to just run down the line and have you answer the question to me, and I will start with **Mr. Broomfield** -- but it'll be the same question to all of you.

Has anything happened today or yesterday after the attorneys have questioned you or after the Court has talked to you that now makes you prejudiced either for or against the Defendant based on something that has happened after the Court or the attorneys have questioned you, such as some comment that some other prospective Juror may have said or perhaps something that the Court

said later on after you had been questioned that has now made you in your conscience and under your oath that you feel that you cannot sit as a fair and impartial Juror, and I ask you, Mr. Broomfield, if anything along this line happened or do you feel right now that you can sit as a fair and impartial Juror in reference to this case?

BY THE JUROR: Yes, I do, Your Honor.

THE COURT: All right; **Mrs. Hart?**

BY THE JUROR: Yes, sir.

THE COURT: **Mr. Henson?**

BY THE JUROR: Yes, sir.

THE COURT: **Mrs. Wright?**

BY THE JUROR: Yes, sir.

THE COURT: **Mr. Anderson?**

BY THE JUROR: Yes, sir.

THE COURT: **Miss Locke?**

BY THE JUROR: Yes, sir.

THE COURT: **Mr. Bronson?**

BY THE JUROR: Yes, sir.

THE COURT: **Mrs. Clark?**

BY THE JUROR: Yes, sir.

THE COURT: **Mr. Brown?**

BY THE JUROR: Yes.

THE COURT: **Mr. Hall?**

BY THE JUROR: Yes.

THE COURT: **Mr. Long?**

BY THE JUROR: Yes, sir.

THE COURT: And **Mr. Rayburn?**

BY THE JUROR: Yes.

\* \* \*

[1386-1387]

**Mrs. White**, during this week have you learned anything about this trial which would now make it impossible -- anything about this trial outside this Courtroom when you were sitting here before? I'm talking about something like a discussion or reading of a newspaper or hearing it on the radio, anything along these lines outside of this Courtroom which would now make it impossible for you to serve as a

fair and impartial Juror, in your own conscience and under your oath insofar as this second phase is concerned?

BY THE JUROR: No, sir.

THE COURT: All right; Mr. Broomfield?

BY THE JUROR: No, Your Honor.

THE COURT: Mrs. Hart?

BY THE JUROR: No, sir.

THE COURT: Mr. Henson?

BY THE JUROR: No, sir.

THE COURT: Mrs. Wright?

BY THE JUROR: No, sir.

THE COURT: Mr. Anderson?

BY THE JUROR: No, sir.

THE COURT: Mrs. Locke?

BY THE JUROR: No, sir.

THE COURT: Mr. Bronson?

BY THE JUROR: No, sir.

THE COURT: Mrs. Clark?

BY THE JUROR: No, sir.

THE COURT: Mr. Brown?

BY THE JUROR: No, sir.

THE COURT: Mr. Eldridge?

BY THE JUROR: No, sir.

THE COURT: Mr. Holl?

BY THE JUROR: No, sir.

THE COURT: Mr. Long?

BY THE JUROR: No, sir.

THE COURT: Mr. Rayburn?

BY THE JUROR: No, sir.

**EXCERPTS FROM VOIR DIRE**

**EXPLANATION OF PROCEEDINGS TO  
PROSPECTIVE JURORS**

\* \* \*

[28-31]

THE COURT: Ladies and gentlemen, I meant to discuss with -- in fact, before I let the other prospective Jurors go, I meant to explain to you what Phase One and Phase Two portion of a trial is in this particular aspect. I -- I just flat forgot it. Let me tell you, we're dealing with the charge of first degree murder.

In a first degree murder case, you have two separate phases of a trial. The first phase, I'm going to refer to as Phase One, and you'll hear the attorneys referring to Phase One portion of the trial later. The only question that you, the Jury, will be deciding is whether the Defendant is guilty or not guilty. That's your only question that you are to decide in Phase One. Now, assuming that you were to find the Defendant not guilty, then Phase Two portion of the trial would never come about, so that you would only have Phase One. Now, on the other side of the coin, assuming that you found the Defendant guilty of first degree murder, then Phase Two -- excuse me -- let me go back and explain something I should have gone on awhile ago.

In Phase One, if you found him not guilty of first degree murder, Phase Two would never come along. I've explained



that to you. If you found him guilty of anything except first degree murder, Phase Two would never come on. For example, if you found him guilty of second degree murder, then Phase Two would never come on. It would only come into play in the event that you find him guilty of first degree murder. Now, if you find the Defendant guilty of first degree murder, as charged, in the first phase, then Phase Two comes into play. Now, Phase Two, at that time additional evidence may come in or evidence that would not have been admissible in Phase One can come in in Phase Two, and the question that you will be answering in Phase Two is what recommendation does this Jury want to make to the Court as a sentence for this man. In the event you were to find him guilty of first degree murder as charged, there are two sentences that can be given to this man. One is death by electrocution.

The other one is life imprisonment. Those are the two alternatives that the Court has in the event you find him guilty of first degree murder in the first phase.

Phase Two, the Court is asking you to make a recommendation to me as to what you think I should give him. Additional evidence is presented to you and it's for the purpose of showing what's called aggravating circumstances versus mitigating circumstances, aggravating means -- meaning reasons putting to death; mitigating means reasons not to put him to death. Now, that's sort of generalities and the two attorneys will go into it a little bit more as to what the mitigation versus the aggravating circumstances are. But, after that part of it has been done and given to you, you would then find whether or not, in your opinion, the aggravating circumstances outweighed the mitigating circumstances and, if so, then

you would come back and recommend to the Court that this man be put to death. If you found that the mitigating circumstances outweighed the aggravating circumstances, you would come back and recommend to the Court that the Court give him life. The Court is not bound by your recommendation. The ultimate responsibility for what this man gets is not on your shoulders. It's on my shoulders. You are merely an advisory group to me in Phase Two. You can come back and say, Judge, we think you ought to give the man life. I can say, I disregard the recommendation of the Jury and I give him death. You can come back and say, Judge, we think he ought to be put to death. I can say, I disregard your recommendation and give him life. So that this conscience part of it as to whether or not you're going to put the man to death or not, that is not your decision to make. That's only

my decision to make and it has to be on my conscience. It cannot be on yours. You are merely advising me as to what you would do if you were sitting here. That's a quick overview of Phase One and Phase Two.

\* \* \*

[42-43]

MR. OLDHAM: You don't believe in capital punishment; is that correct?

THE JUROR: Right.

MR. OLDHAM: Well, let me ask you this. Would it make any difference whether it was this case or any case? Would it make any difference of what type case it was that you don't believe in capital punishment?

BY THE JUROR: Yes, I think I'd vote -- I think he's too young to die.

MR. OLDHAM: Well, would it make any difference what type of case it is?

BY THE JUROR: It would make, yes; it

would.

MR. OLDHAM: Could you vote a death verdict of murder in the first degree in any case under any circumstances?

BY THE COURT: Excuse me. Mr. Oldham, explain yourself, now. They don't vote a death verdict. They only vote the question of guilt or innocence.

MR. OLDHAM: I'm sorry, Your Honor.

BY THE COURT: The obligation is mine.

\* \* \*

[123-128]

THE COURT: All right. The Court intends to sort of give a brief thumbnail sketch of Phase One and Phase Two in a first degree murder charge as this. Any objection to that Mr. Oldham?

MR. OLDHAM: No objection.

THE COURT: Mr. Black?

MR. BLACK: No, sir.

THE COURT: All right. You

prospective Jurors, this type of case that we're considering today is what's called a first degree murder charge. The Defendant here is charged under an indictment of first degree murder. When you are considering a first degree murder case, there are two phases to a trial. For convenience sake, I'm referring to them and I think the attorneys will be referring to them, also, as Phase One and Phase Two. So that you will know the terminology, I want to give you a quick rundown as to what's involved in a criminal trial of this nature where there is a first degree murder charge. In Phase One, the only question that you are concerned with is: Is he guilty or not guilty of murder in the first degree or some lesser included offense, such as second degree, third degree or manslaughter. So that in Phase One, the only question that you will be voting on

is: Is the Defendant guilty of first degree murder or not guilty of first degree murder, and if not guilty of first degree murder is he guilty or not guilty of some, what's called, lesser included offense, which I will explain to you more if and when you are selected as a Juror. In the event, and I'm not assuming innocence or guilt in anything I'm saying today. I'm merely trying to explain to you the procedure. Assuming that you find the Defendant not guilty of first degree murder, then there would never be a Phase Two portion of the trial. You would only go through Phase One. Assuming that you found the Defendant guilty of second degree murder or third degree murder or some other lesser included, there would never be a second phase to this trial. It would end with Phase One and then the Court would take over from that point forward. Assuming, again, without



indicating whether or not he is guilty or not guilty, assuming for the explanation that you were to find this Defendant guilty of first degree murder as charged, that being from a premeditated design to effect the death of the person that he killed, or some other human being, but from a premeditated design you find that he is guilty as charged, then Phase Two comes into operation. At that time, after you have come back and, by the way, that -- that must be unanimous. All twelve who sit on it must have voted guilty of first degree murder as charged, or not guilty or guilty of some lesser included, but assuming all twelve of you were to vote for guilty of first degree murder as charged, at that point perhaps additional evidence would then be presented to you after you return that verdict. The Defendant would have the right to present testimony which he believes would show



what's called mitigating circumstances. The State Attorney would have the opportunity to present to you what he believes is called aggravating circumstances. Those are two terms that you are going to hear more and more about, aggravating versus mitigating.

Generally speaking, aggravating will mean that which tends to make you believe that the man should be put to death, mitigating meaning that which would tend to make you believe that he should not be put to death but should be given life imprisonment. If you were to find him guilty of first degree murder as charged, the Court is bound to make one of two sentences to the Defendant. One is death by electrocution; the other one is life imprisonment. The Court does not have the authority to do anything but that. This second time that you would go out to deliberate, the question that would be

asked of you is, please tell the Judge what you think should happen to this man. This is what is called a recommended verdict -- a recommended sentence. Excuse me -- a recommendation of a sentence. At that particular time that you vote, it is only necessary that a majority of you vote in a certain way. If you got out, after you have heard all of the testimony and I've given you additional law and the other procedure that you have to go through, if you felt that the aggravating circumstances outweighed the mitigating circumstances, and seven of you were to vote for death, then the recommendation that would come back would be, Judge, we recommend that you order that the man be put to death. If you get back in there on the second phase and you feel that the mitigating circumstances are equal to or outweigh the aggravating circumstances, and seven of you or more should vote for a

life sentence, then you would come back and recommend to the Judge, Judge, we feel under these circumstances that this man should not be put to death but should receive a life sentence. That is a recommendation only. The Court is not bound to accept your recommendation, so that I do not want you to feel that it is on your conscience to put the man to death. That is not your responsibility but that is the Court's responsibility and it is something that I have to put on my shoulders. If you come back and recommend that the man be put to death after Phase Two, I can say, I disagree with the recommendation; I hereby sentence the man to life. He gets life imprisonment. I'm the one that has to make that decision. If you come back in and you say, we recommend that the man be given life, I can say: I disregard your recommendation. I feel that the man needs

to be put to death, and I would order him to be put to death. So, the second phase of it is just an aid to the Judge to help him make up his mind, but that decision is not your decision.

You are the sole judge as to whether or not he is guilty or innocent. I am the sole determiner on whether or not the man receives life or is put into the electric chair. Do you feel any further explanation needs to be gone into at this time, Mr. Oldham?

MR. OLDHAM: No, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: No, sir.

\* \* \*

[169-174]

THE COURT: As I just indicated to you, this is a case of what's called murder in the first degree. In the case of murder in the first degree, there are two phases to a criminal trial. We have

been referring to and I refer to them as Phase One and Phase Two of the trial. This is what the attorneys will be referring to, also.

In a case of this nature where there is a first degree murder charge, the first question that the twelve that are finally picked to serve on the jury must answer is the Defendant guilty or not guilty of murder in the first degree. That is your sole question. No question about penalty or anything along these lines. The sole question is he guilty of murder in the first degree as charged. Assuming, and without trying to indicate whether or not I believe the Defendant is guilty or innocent, merely for the purposes of explaining Phase One and Phase Two, assuming that you found that the Defendant was not guilty of murder in the first degree -- in other words, you found he wasn't guilty of anything and you voted

not guilty, then Phase Two would never come about. No question of penalty would ever come about. In the event that you felt that he wasn't guilty of first degree murder but he was guilty of, say, second degree murder, third degree murder or some other lesser included offense within the first degree murder, the second phase of the trial would never come about. The Court would merely go on with the penalty portion of it, but assuming and, again, merely for an explanation viewpoint, assuming that you found the Defendant was in fact guilty of first degree murder as charged, then Phase Two of the trial would come into being. In Phase Two of the trial -- excuse me -- in the question of innocence or guilt in Phase One, that must be by unanimous decision. All of you must vote guilty of murder in the first degree or all of you must vote not guilty or all of you must vote guilty of some lesser

included. Now, when I say all of you must vote in that manner, that -- only in the event you returned a verdict. I'm not telling you that when you get back into the room that all of you have to vote the same way. You don't. You can have what's called a hung jury, and that's the right of our jury system, is to have a hung jury. So, I'm not telling you that just because eleven of us vote one way and you think something else that you must vote in that manner because I'm not telling you that, but in the event you return a verdict in Phase One, it will be a unanimous verdict. In other words, all of you must have voted before you bring the verdict back to me of not guilty or of guilty of some -- first degree or some lesser included.

Now, if all of you vote for first degree murder, as charged, then a second phase comes about. In this phase of the



trial, additional testimony can be presented by the State to show what's called aggravating circumstances. That's a key word. You are going to be hearing that in a little while. Also, the Defense Counsel can bring in additional evidence that may not have been admissible in the first phase but now would be admissible in the second phase to show what's called mitigating circumstances. That, too, is a key word. Generally speaking, for demonstrative purposes, the term "aggravating circumstance" means that type of circumstances that would tend to make you believe that the man should be put to death. Mitigating circumstances, on the other hand in the general sense of the term, means that type of circumstances which tends to make you believe the man should not be put to death but should be given a life sentence. If you found him guilty of murder in the first degree, the



Court is bound to find one of two penalties, either the penalty of death by electrocution or life imprisonment. The Court cannot do anything except one of those two things. Now, when -- after you've heard the evidence in Phase Two portion, if any additional evidence is introduced, you go back into the jury room and you can consider the evidence that was brought to you in Phase One and the evidence in Phase Two and at that time vote whether or not you want to recommend to the Judge whether the Judge give him death in the electric chair or life imprisonment. That vote must only be done by plurality, which means seven of you must vote in one manner or another. That would mean that if you got back in the juryroom and five believed that he should be put to death and voted in that manner and seven believe that he should not be put to death but given life, then you

would come back with the recommended verdict to the -- recommendation to the Judge that I sentence him with life -- whichever one I said the seven voted. That's the way that your recommendation would come back. If, on the other hand, seven of you believed that he should be put to death, and five believed that he should be put -- given life, then the recommendation that would come back to the Judge is death, by plurality of the vote.

One thing is very, very important. That is only a recommendation to the Judge. It is not upon your conscience whether this man goes to the electric chair or not but it's solely upon the Judge's conscience. Even if you came back and recommended death, the Court has the right and the power to say, I disregard your recommendation and give the man life imprisonment. If you come back and say the man should not be put to death and I

disagree with that, the Court has the power to say, I disregard your recommendation of life and put him to death. The ultimate responsibility of whether this man shall be put to death or not put to death is on the Court's shoulder and upon the Court's conscience and is not upon your conscience.

\* \* \*

[183-187]

THE COURT: As I just read to you, the case that we're discussing here today involves a first -- a charge of first degree murder. In a first degree murder case, there are two phases to a trial. The Court is going to be referring to -- the term I'm going to use will be Phase One and Phase Two. Now, the attorneys, also, will be using that terminology, Phase One and Phase Two; Phase One meaning the first portion of the trial. In Phase One, the only question that will be

presented to the jury, and there will be twelve of you, is the Defendant guilty of first degree murder or not; yes or no, and if the answer is no, he's not guilty, then you could find him not guilty, period, of any crime or you could find him guilty of some -- what's called -- lesser included crime, such as second degree murder, third degree murder or some lesser included than that. That vote by the twelve of you would have to be unanimous. In other words, if you return a verdict of not guilty or guilty of first degree murder or some lesser included, all twelve of you must have voted for that particular verdict in that manner.

Now, assuming, and without giving any indication as to whether or not the Court believes the Defendant is guilty or not, but just assuming for the purposes of trying to explain to you the two phases in this type of case, assuming that you were

to go back in there and you found the Defendant not guilty, not guilty of any crime whatsoever, then Phase Two of the crime -- Phase Two of the trial would never come about. In the event you went back there and you found him guilty of second degree murder or any of the lesser included offenses, then Phase Two would never come about; but assuming, and again only assuming for illustration purposes, that you found him guilty of murder in the first degree, then the second phase comes into effect. That means that after you come in with a verdict and you said, yes, we believe the man to be guilty of first degree murder as charged, then the second phase commences. At that point the State would have the right to bring in and present to you what's called aggravating circumstances. The Defense at that point would have the right to present additional evidence if they desire to do so, to show

you what's called mitigating circumstances. There may be some types of evidence that's admissible in Phase Two that are not admissible in Phase One. So they -- both the State and the Defense gets an opportunity to present further evidence to you.

The term "aggravating circumstances" is a term that you're going to be hearing a lot of and the term "mitigating circumstances" is a term you're going to be hearing a lot of. As a general statement, consider the term "aggravating circumstances" to mean those types of circumstances that convinces you that the man should be put to death rather than given life imprisonment. For "mitigating circumstances," consider those to be the type of circumstances that tend to make you believe the man should not be put to death but should be given life imprisonment. Assuming that you find him,

in the first phase, guilty of first degree murder, the Court only has two sentences that he can consider -- that I can consider. Number one is death by electrocution and, number two, is life imprisonment. I cannot do anything but one of those two things. Now, after the evidence has been presented to you in the second phase, you go back and vote again. This time the question is: Do you, the jury, want to recommend to the Court that this man be given death or do you want to recommend to the Court that he be given life imprisonment rather than death. That vote, out of the twelve, seven of you must cast your ballot in a particular way. For an example, if you get back in there and seven of you believe that you would not want him put to death, or recommend to the Judge that I order him to be put to death, and five of you wanted him to be put to death, the recommendation



that would come back to the Judge is life, not death. Did I -- did I say -- whichever way the seven voted is the way that you would come back and recommend to the Judge, for either life imprisonment or death. Now, one thing that is very important that I have tried to stress to all of the Jurors in this case, that is a recommendation only. You do not decide whether the man will be put to death or given life imprisonment. That falls upon me as the Court, as I sit here as the Judge. You may come back and recommend to me that he be put to death. The Judge has the power to say, I disregard the recommendation of the jury, and give him life imprisonment. You can come back and say, I recommend that he be given life imprisonment. The Court has the authority and the duty to determine whether or not he will, in fact, get life or whether I want to give him death. So, the question



as to whether or not this man is to be sent to death in Phase Two, assuming you get to that, does not fall upon your conscience or your shoulders. They only fall upon mine. The only purpose of the recommendation to the Court is merely as an advisory group to help me make up my mind as to the way that I want to do it. Is there anything further you think should be explained, Mr. Oldham?

MR. OLDHAM: No, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: That's fine, Judge.

\* \* \*

[229-234]

THE COURT: All right. For the ones that have already heard this, just bear with me. It makes it a lot easier if I go ahead and explain to the new prospective Jurors the procedure this type of trial has.

We're dealing with a charge of first

degree murder. In a first degree murder charge, there can be two phases to a trial, and I'll be referring to them as Phase One and Phase Two. Also, the attorneys will be referring to Phase One and Phase Two; so, that's what they will be talking about, the two separate phases of the trial. Phase One of the trial, the only question that's asked of the jury is: Is the man guilty of some crime or not guilty. You can come in, and assuming that -- and only assuming, without trying to indicate whether or not I believe the Defendant is guilty or innocent, only assuming for purposes of illustration, that you were to go out and come back in and find that the man was not guilty, not guilty of anything. Number one, all twelve of you would have had to cast that ballot. It must have been an unanimous vote in order to come back with that type of verdict. Then, Phase Two would never

come about. You would end up with Phase One. Assuming that you went out and found that he was not guilty of first degree murder but that he was guilty of second degree murder, third degree murder or some other what's called lesser included, which I will explain to you later on in the trial, if you found him guilty of anything except first degree murder, then there would never be a Phase Two portion of the trial. Then, the Court would take over and give punishment in accordance with the law.

But, now, assuming, and again let me emphasize it's only for illustration purposes, assuming that you go out and you find that the Defendant is, in fact, guilty of first degree murder as charged. Here, again, that would have had to have been an unanimous verdict. The first phase of the trial, no matter what you find, has to be by an unanimous

vote. That means that all twelve of you must have ended up voting in that particular way. If you found him guilty of first degree murder as charged, then Phase Two would become applicable. In Phase Two, after you had gone out and come back in and said, yes, Judge, we feel that the Defendant is guilty of first degree murder, then the State would have the right to come forward and present some more evidence to you. The State would be attempting to present to you what is called aggravating circumstances. The term "aggravating circumstances" is a very important term that you're going to be hearing more from the attorneys talk about. Aggravating circumstances, in a general term, is to be interpreted to mean those types of circumstances that make you believe that the man should be put to death rather than given life imprisonment. The Defense would have the

right, then, to come forward and present to you what's called "mitigating circumstances". There, again, from a general term, I think you could consider mitigating circumstances to be those circumstances that tend to make you believe that the man should be put to -- given life rather than put to death. When you get through with -- with that evidence being presented, then you are to weigh whether the aggravating circumstances outweigh the mitigating circumstances or whether the mitigating circumstances outweigh or are equal to the aggravating circumstances. When this happens you're in the juryroom. The only verdict that you're trying to come up with at that point is a recommendation to the Judge as to what the Judge should do to this man. If you found him guilty of first degree murder, the Court has two alternatives. One, the Court can order

the man to be put to death by electrocution or, number two, he can order that he be given life imprisonment. Those are the two alternatives that the Judge has in a first degree murder case. So, now, you have heard the evidence based on the guilt, plus you've had the evidence that was shown to you that -- that would tend to show that it was either aggravating or mitigating circumstances. You've gone back into the juryroom and you get together and at this vote there must only be a majority of this twelve, which means seven. Seven must vote for either recommending to the Judge that the Judge give him death or give him life imprisonment. In other words, if five of you wanted to give him life imprisonment and seven of you wanted to give him death, you would come back with the recommendation of death, and vice versa. If seven of you wanted to give him life

and five wanted to give him death, then you would come back with the recommendation of life. The most important portion -- the most important thing on this is for you to understand that that is a recommendation to the Judge. It's not on your conscience and it's not on your shoulders and it's not your responsibility to decide whether or not this man will be put to death. That's on the Court's shoulders and it's the Court's responsibility. You could come back in and recommend to the Judge that the man be given life. I can decide that I will disregard your recommendation and I can order him put to death. You can come back in and recommend to the Judge that he be given death. I can say, I will not follow that recommendation; I will give him life imprisonment. So that the ultimate responsibility for whether or not the man is put to death or not put to



death is not upon your shoulders or in your conscience. It's on the Court's -- that's the Court's responsibility. It's merely a tool that the Court uses. I will sit here and I will hear all of the evidence, also, but it's merely a tool to help the Judge decide what he wants to do. The responsibility and the obligation is on the Judge, not upon the jury.

Any further explanation, Mr. Oldham, you feel is necessary?

MR. OLDHAM: No, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: No, sir.

\* \* \*

[242-247]

THE COURT: All right; here, again, the rest of the Jurors will just have to bear with us.

This is a charge of first degree murder and in a charge of first degree murder, there can be two phases to a



case. Now, I'll be referring to these two parts of the case as Phase One and Phase Two. This is also the terminology that the attorneys will be using later on in questioning you concerning these phases.

Phase One of this particular case, in a first degree murder, the question is presented to the jury as to whether or not the Defendant is guilty of some crime or not guilty. That's the only question that's asked to the jury in Phase One. The jury is -- excuse me -- the jury is asked to determine as to whether or not the Defendant is guilty of first degree murder as charged or second degree murder, third degree murder or some other lesser included offense which I will explain to you later on in the trial, or whether or not he's not guilty of anything. When you retire after hearing the evidence and I give you the instructions on the law to determine that question, there will be

twelve of you there. Twelve -- assuming that you returned a verdict, then that verdict must be unanimous. All twelve of you must have voted either not guilty of anything or not guilty of first degree murder but guilty of second degree murder, third degree murder or any of the lesser included offenses, or the other thing that you could find would be guilty of murder in the first degree. Now, assuming you find not guilty; then, Phase Two would never come into play. Assume that you find that he was not guilty of first degree murder but was guilty of manslaughter or some of the other lesser included offenses, second degree murder or whatever the case may be, anything except first degree murder, then Phase Two would not come into being, but if, and assuming, and it's merely for illustration purposes and I am not -- do not want you to take anything that I say to indicate whether or

not I believe the Defendant is guilty or not guilty, but it's merely for illustration purposes -- assuming that this jury found that this Defendant was guilty of first degree murder as charged, then Phase Two would come into play because once the murder in the first degree charge has been found, then the Court has two alternatives for a sentence to be given to the man. The Court can either give the man death by electrocution or life imprisonment. Now, under our system the Court asks the jury for a recommendation for what the jury thinks the Court should do. Before you do that, after you found him guilty in Phase One, then more evidence may be presented to you by the State that would tend to show what's called aggravating circumstances. Now, the term "aggravating circumstances" is another term that you're going to be hearing the attorneys refer to. So, it's

quote a technical important term. Generally speaking, the term "aggravation", I think, can be interpreted to mean that it's the type of circumstances that tends to make you believe that the man should be put to death for the murder he committed. The other side of the coin is -- and the Defense may come forward if they elect to do so and present what's called "mitigating circumstances." Now, mitigating circumstances is another technical term that you will be hearing talked about and I think that you can consider that from the general viewpoint that those are the type circumstances that tend to make you believe the man should not be put to death for this murder but should be kept in prison for a long period -- should be given life imprisonment for the murder.

The reason for the second phase, one

of the reasons for the second phase is additional evidence can be presented in the second phase that may not be admissible in the first phase. So, it opens up and gives the Defendant a chance to present evidence that he could not have presented in the first case -- the first part of the case that he can present in the second part, or the State could not have presented certain types of evidence in the first part of the case but they can in the second portion of the case. The most important thing for you to remember about a recommendation to the Judge on Phase Two is that it's exactly that. It's only a recommendation. The Judge is not bound to do what you have suggested that the Court would do. When you go back into the juryroom and this particular vote for the recommendation does not take unanimity. All of you don't have to vote for the same thing. Then, it only takes

what's called a plurality. Seven of you must vote to recommend to the Judge one of two things, either life imprisonment or death. If you go back there and five of you want to give him life -- not -- the Court gives it to him -- that you want to recommend that the Court give him life and seven of you wanted to recommend that the Court give him death, then the recommendation to the Court would be death because seven voted in that manner, and vice versa is true. If seven of you voted for life and five of you for death, the recommendation that would come back to the Court would be life. That is only a recommendation. It should not be on your conscience nor is it on your shoulders whether or not this man will be put to death or not. That is the Court's sole responsibility and not the Jurors' in any manner whatsoever. The jury can come back and recommend that this man be given

death. The Judge has the power and the obligation -- it is my obligation to determine whether or not he should be put to death or life. I can say I disregard the recommendation or I've considered the recommendation but I'm not going to follow it, and I can give him life, if you recommend death. You can come back and recommend life and I can say I've considered it but I'm not going to follow it and I can give him death. So, the ultimate decision as to whether or not the man lives or dies has to be on the Court's conscience and it's the Court's obligation. The Court is not trying to shuttle this obligation off to the jury at all, and I don't want you to feel that you determine whether or not this man lives or dies because you don't. It's only a tool that I can utilize to make up my mind ultimately whether or not he should be put to death or given life imprisonment.



Have I covered all the points that I need to, Mr. Oldham?

MR. OLDHAM: Yes, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: Yes, sir.

\* \* \*

[288-293]

THE COURT: This particular case that we're dealing with is a charge of first degree murder. A first degree murder case is different than any other case that the Court has to try. In a first degree murder case, there are two parts to a trial. I'm going to refer -- be referring to these as Phase One portion of the case and Phase Two portion of the case. The attorneys will be referring to this phraseology, also. They will be asking you later on questions about -- well, now, if we're in Phase One and you do so-and-so, what's going to happen, or in Phase Two. So, please try to listen carefully



and I'll try to explain to you what Phase One and Phase Two is in a first degree murder trial. If you're elected to sit on the Jury here -- selected to sit on the Jury here, the first time -- the first phase, the first question that will be asked of the twelve of you who end up sitting as our Jury will be asked to determine is the Defendant guilty of any crime whatsoever or not guilty of any crime. That will be the only question that you will be determining. You will go back into the Juryroom and assuming you reach a verdict, all twelve of you will come back and tell -- tell the Defendant, we find you not guilty of any crime, or we find you not guilty of first degree murder but find you guilty of second degree murder, third degree murder or some other lesser included offense, which I will explain to you later on in the trial. Now, if you come back with any of those

verdicts, either not guilty of any crime or guilty of any crime less than first degree murder, then there will never be a Phase Two portion of the trial. It will end right there so far as the Jury is concerned and then it's the obligation of the Court to go from that point forward, but assuming, and this is merely for illustration - all the talking I'm doing to you now is merely for illustration purposes. Do not take anything that I'm saying now to indicate whether or not I believe the Defendant is guilty or not guilty because I don't know and that's not my job. That's your job, but assuming for illustration purposes that you come back and say, Defendant, we find you guilty of first degree murder as charged, then, Phase Two comes into play. At that point in the trial, you have found the Defendant guilty of first degree murder. Then, additional evidence can be presented to

you by either the State or the Defense at that time. Now, the reason for the second time to have evidence presented to you is in Phase One, it may not be admissible. There are certain types of evidence that they can bring in in Phase Two that they could not bring in in Phase One. Once we get into Phase Two, then the State would be entitled -- excuse me -- then the State would be entitled to present evidence to you tending to show what's called aggravating circumstances. The term "aggravating circumstances" is one of those legal niceties that we talk about, technical words, aggravating circumstances. You're going to be hearing that referred to in the questioning by the attorneys. I think that you can consider the term "aggravating circumstances" from a general statement to be that type of circumstances that tends to make you believe that the person should be put to

death rather than given a life imprisonment. The Defense, on the other hand, will be presenting what's called "mitigating circumstances". Here, again, that's a technical term, mitigating circumstances, but from a general viewpoint I think that you can say that mitigating circumstances are those type of circumstances that makes you believe that the man should be given life imprisonment rather than be put to death. So those are some technical terms that you will be hearing throughout this trial.

Now, when that portion of the trial has been presented to you, you will again go back into the Juryroom. At this time you will be voting whether or not to recommend to the Judge that the defendant receive a life imprisonment or that the Judge give him death by electrocution. This vote only takes what's called a plurality. Only seven of you must vote a

certain way. For an example, if five of you were to vote to give him life imprisonment, and seven of you were to vote to recommend to the Judge that he be given death, then the recommendation that would come back to the Judge would be death because seven of you would control. If, on the other hand, seven of you were to vote for life and five of you vote for death, then the recommendation coming back to the Judge is to give the man life.

The most important thing for the Jury to remember, in my estimation, on this recommendation of the sentence to be given is it's exactly that. It's only a recommendation. The Judge is not bound by your recommendation. The obligation and the responsibility of whether or not this man will ultimately receive, assuming he's found guilty of first degree murder, the ultimate obligation as to whether or not

he will be given death or life is the Court's. It has to be on my shoulders and on my conscience. It is not on the Jury's conscience. You can come back and recommend to the Court that he be given death by electrocution. I can say, I considered your recommendation but I feel that the man should be given life imprisonment and I have the power and the obligation to give him life imprisonment. You can come back and recommend that he be given life imprisonment and I can say I've considered your recommendation but I disregard it or I'm not going to follow it. I feel that the man should get death and I'll give death by electrocution. So that the ultimate conscience that has to live with whether or not this man will be put to death or not is not on your conscience but it's on my conscience. So I want to make certain that you understand, you will not

determine whether this man is put to death or not put to death. I will have that obligation and that's my responsibility.

Anything further you think needs to be covered, Mr. Oldham?

MR. OLDHAM: No, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: No, sir.

\* \* \*

[351-357]

(Thereupon the Jurors were duly sworn by the Clerk to try the case at 9:18 A.M., after which the following proceedings were had):

THE COURT: All right. Again, for the benefit of the two that are about to be questioned with the possibility of becoming the alternate Jurors, the Indictment reads that the Defendant, Aubrey Dennis Adams, did, in Marion County, on the 23rd day of January, 1978, did unlawfully from a premeditated design



to effect the death of Trisa Gail Thornley, or any human being, did kill and murder Trisa Gail Thornley, a human being, by strangling the said Trisa Gail Thornley, in violation of Florida Statute 782.04. I again remind you that the Indictment is not to be considered as evidence but is the mere formal accusation against the Defendant. You must not consider it as evidence of the Defendant's guilt and you must not be influenced by the fact that this Indictment has been filed against him. Before I go on, it would be the Court's intention now to explain to the two alternate Jurors what Phase One and Phase Two of the trial consists of. Any objections, Mr. Oldham?

MR. OLDHAM: No objections, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: No, sir.

THE COURT: All right. Mrs. White and Mrs. Morris, in a case of this nature,



which is a charge of first degree murder, there is a possibility of two separate phases within the trial. I will be referring to these phases as Phase One and Phase Two. Also, the attorneys later on, when they begin questioning you, will be talking about, well, if we were in Phase One, if certain things happen, what would you do. So it's very important that you understand about Phase One and Phase Two. The first question that will be presented to the Jury and what we refer to as Phase One, the only question that you will be answering in Phase One is whether or not this Defendant is guilty or not guilty. You can, for an example, come back -- and anything that I say is only for illustration purposes and it's not to be taken by you as any indication as to whether or not I believe the Defendant is guilty or innocent, but you could go back after all the evidence has been presented

to you, go back into the Juryroom and you may find the Defendant not guilty of anything. So if you find the Defendant not guilty of anything, Phase Two would never come about. You could go back into the Juryroom and come back out and say, well, the Defendant is not guilty of murder in the first degree but is guilty of murder in the second degree, third degree or some -- some other lesser included offenses, which will be explained to you later on in the trial. If you find him guilty of anything except first degree murder, then Phase Two would never come into being, but assuming, and again only for illustration purposes, assuming that you go back after the first phase of the trial has been presented to you and you come back and say, yes, the Defendant is guilty of first degree murder as charged. Then, Phase Two does come into play. At that point you come back into

the Courtroom. The State has an opportunity to present additional evidence to you and they will be presenting types of evidence that's called -- that's trying to show you what's called aggravating circumstances. The term "aggravating circumstances" is a technical term that you'll be hearing later on in some questioning. From a general viewpoint, I think that you can assume that-- or you can interpret the term "aggravating circumstances" to mean those types of circumstances which tends to make you believe that the Defendant should be put to death. On the other hand, the Defense will have an opportunity to present to you other testimony and other evidence trying to show you what's called mitigating circumstances, and, here again, the mitigating circumstances is a technical term but from a general viewpoint you can interpret it to mean the type

circumstances which tends to make you believe that the Defendant should be given life imprisonment rather than the harsher, putting the Defendant to death. The reason that you have a second phase, rather than presenting it all at one time, is that there are certain types of evidence that cannot be presented in Phase One, the question of guilt or innocence, that can be presented to you in Phase Two; so that you can then come in with a recommended verdict. Phase Two, when you -- let me go back just a minute. Phase One, the question of guilt or innocence, if you come back with a verdict it would have to have been a unanimous verdict. In other words, all twelve of you must have voted for guilty as charged, guilty on some lesser included offense or not guilty. All twelve of you must have voted in that manner.

Phase Two, when you go back in to

vote, only the plurality must have voted in a certain way. In other words, the question that they ask of you is: Do you recommend to the Judge that this man be given life imprisonment or be put to death by electrocution. That vote only takes seven people. Seven out of the twelve must vote a certain way, either for death by electrocution -- the recommendation that the Judge give him death by electrocution or a recommendation that he be given life imprisonment. Now, the most important thing to remember in Phase Two is that the second vote that you take is exactly what it is, a recommendation to the Judge. The Judge is not bound to follow that recommendation. You will not decide whether or not this man will be put to death or not put to death. That is the Judge's decision and I am the only one that will make that decision, or whoever sits here at that particular time if it

not be me, but you should not feel on your conscience or that it's on your shoulders whether or not this man is going to be put to death or not because that is not your decision. You may come back and recommend that this man be given life imprisonment. The Court then says, I've considered it and I disregard it and I can put the man -- have the man put to death or order that he be put to death. On the other hand, you can come back and recommend that he be put to death and I can say, I've considered it and I'm not going to order that the man be put to death and I can give him life imprisonment. So the responsibility and the conscience it has to bear upon as to whether or not this man is going to be put to death or not is not yours; it's mine. The recommendation that the Jury makes is strictly that. It's a recommendation; it's another tool that the Judge uses to

reach his final determination, but it should not be on your conscience nor is it your responsibility. That's the Court's responsibility.

Mr. Oldham, do you know of anything further that needs to be covered on that aspect?

MR. OLDHAM: No, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: No, sir.

\* \* \*

[365-366]

THE COURT: Mrs. White, it's become necessary that the Court inquire a little bit more concerning the imposition or the possible imposition of the death penalty and your feelings concerning it. You heard the Court explain to you, did you not, that it is not you who will impose the death penalty?

BY THE JUROR: Yes, sir.

THE COURT: All right. And you also



heard the Court say that no matter what you recommend, the Court is the one that has the obligation and duty to determine whether or not this man is put to death. You understand?

BY THE JUROR: Yes.

\* \* \*

[386-391]

THE COURT: Mr. Eldridge, in a case of this nature, which is a first degree murder charge, there is a possibility that there can be two phases to the trial. It's very important that you understand these two phases so that later on in questioning or in the trial, if you are selected, that you don't misunderstand what's going on. Phase One is the portion where evidence is presented to you with the idea of asking the Jury the sole question, is the Defendant guilty or not guilty. That's the only question that you answer in Phase One. There's no question



about penalty or what's going to happen to the Defendant or anything along these lines. The only question the Jury answers in Phase One is: Is the Defendant guilty or not guilty. Now, if you were to go back into the Juryroom and are able to vote, since you are being selected as an alternate Juror, but if you are able to vote, then the Jury would come back and were to find -- and this is for illustration purposes only; do not -- don't take anything I'm saying as an indication as to whether or not I feel the Defendant is guilty or not guilty. That's your decision to make. My talking to you is for illustration purposes only.

Assuming that you were to go back in there and you came back and found that the Defendant was not guilty, not guilty of anything. Then, there would never be the second phase of the trial. If you went back in and came back out and said the

Defendant is not guilty of first degree murder but is guilty of second degree murder, third degree murder or anything else that's called lesser included offenses, anything but first degree murder, if you found him guilty of something other than first degree murder, there would never be a Phase Two portion of the trial, but in the event, and again it's for illustration purposes only, in the event that you were to go back and you came back out and said, yes, we find the Defendant guilty of murder in the first degree, then, Phase Two would come into being. Now, the first vote, if you come back with a verdict, the first time that you come back with a verdict, either guilty , not guilty or guilty of some lesser included offense, that must have been by twelve people. All twelve of you must have voted in a particular way, either guilty as charged or not guilty or

guilty of some lesser included offense, but it must have been a unanimous vote.

All right; you come back and you have told the Court, yes, we find the Defendant guilty of first degree murder as charged. At that point, additional evidence can be presented to you. The State may want to introduce some more evidence to you tending to show what's called aggravating circumstances. The term "aggravating circumstances" is one of these technical niceties that you will be hearing talked about but from a general viewpoint you can interpret the term "aggravating circumstances" to mean that type of circumstances which tends to make you believe that the man should be put to death rather than -- excuse me -- those circumstances which tend to make you believe that you should recommend to the Judge that he put the man to death rather than give him life imprisonment. On the

other hand, the Defense will be trying to present evidence to you, or has the right to do so, trying to show you what's called mitigating circumstances. Here, again, mitigating circumstances is a technical term that you will be hearing, but I think you can interpret -- from a general viewpoint, you can interpret the term "mitigating circumstances" to be that type of circumstance which makes you believe that you should recommend to the Judge that the Judge give him life imprisonment versus death. In other words, mitigating being very bad circumstances -- excuse me -- aggravating being very bad circumstances and mitigating being not so bad circumstances. At this time you would retire again and on this vote, the vote that would finally come back in the event you come back with a recommendation to the Judge, seven of you must have voted in one way or the other. It doesn't take all

twelve of you this time. It's only a recommendation to the Judge and there's only a plurality that's required, which would be seven out of the twelve. In other words, if you got back in to -- you came back out; seven of you have voted for -- to recommend to the Judge that the Judge order him be put to death; five had voted that they wanted to give him -- recommend to the Judge to give him life imprisonment. The recommendation that would come back to the Judge would be recommending to the Judge that the man be given death, or vice versa. If seven of you voted to give him life or recommend that he be given life, five wanted to recommend that he be given death, the recommendation that would come back to the Judge is, Judge, we recommend that you give life. The most important thing, I think, for a Juror to remember is in reference to the recommendation. It is

merely that, exactly what it says. It's a recommendation to the Judge. The Judge is not bound to follow that recommendation. You may come back and recommend that I order that the man be put to death. The Judge has the obligation and the duty to say, I disagree with the recommendation; I order the man to be sentenced to life imprisonment, or, you can come back and say, we recommend that the man should be put into prison for life and not be given death. The Judge has the obligation and the duty to say, I disregard that; I feel that the man should be put to death, and I can order him to be put to death. So the conscience that must bear whether or not the man should be put to death or not is not your conscience; it's the Court's conscience. It's on my shoulders and it's my responsibility to do that. It is not on your shoulders nor on your conscience. You cannot order this man put

to death or not put to death. That's not your job. Your recommendation to the Judge is one of the tools that the Judge uses to try to make up his mind. It's not the only tool, by any stretch of the imagination. So that it is strictly a recommendation and nothing more.

Mr. Oldham, do you feel anything else needs to be covered in this aspect?

MR. OLDHAM: No, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: No, sir.

### **EXCERPTS FROM TRIAL**

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#### **PRELIMINARY INSTRUCTION TO THE JURY -** **GUILT/INNOCENCE PHASE**

[416]

THE COURT: It is your solemn responsibility to determine the guilt or innocence of the Defendant and your verdict must be based solely on the evidence as it is presented to you in this



trial and the law on which this Court will instruct you at the close of the trial.

\* \* \*

FINAL INSTRUCTION TO THE JURY -  
GUILT/INNOCENCE PHASE

[1346]

You alone, as Jurors sworn to try this cause, must pass on the issues of fact, and your verdict must be based solely on the evidence or the lack of evidence and the law as it is given to you by the Court.

\* \* \*

[1355]

If you find the Defendant guilty of murder in the first degree, then at a later proceeding you will render an advisory sentence to the Court recommending that the Defendant be sentenced to life or death. The Court may accept such recommendation and sentence the Defendant as recommended, or it may, under certain circumstances, reject such



recommendation and sentence the Defendant to either life or death.

**EXCERPTS FROM PENALTY PHASE**

\* \* \*

**PRELIMINARY REMARKS TO JURY**

[1388-1390]

THE COURT: All right. The one thing I meant to do earlier than that, and I'll do it now, I'll remind you that you have been previously placed under oath to try this case to render a fair and impartial verdict. That would have been your original verdict as well as this verdict. You will note that I'm not going to require that you be sworn again but I want to remind you that you have already been sworn and that oath that you took approximately a week and a half ago is still applicable now so that if anything does happen during this period of time that we're trying the second phase of this case, if something comes forward to you

that makes it in your own conscience and under your oath, something you should reflect to the Court, please do so.

Ladies and gentlemen of the Jury, you have found the Defendant guilty of murder in the first degree. The punishment for this crime is either death or life imprisonment. The final decision as to what punishment shall be imposed rests solely upon the Judge of this Court. However, the law requires that you, the Jury, render the Court an advisory sentence as to what punishment should he -- should be imposed upon the Defendant. You will recall when I first started this case, I told you that there would be two parts to this trial in the event you found first degree murder. You have now found first degree murder and that was the first part. Now, it's necessary that we go into the second part. During this part, both the State and the Defense will have an

opportunity to present additional testimony to you other than what you've already heard to show either what's called aggravating circumstances versus mitigating circumstances. The State will have a right, if they feel it's necessary, to show additional evidence that tends to show aggravating circumstances. The general term, what you can generally believe or a good definition that I think for aggravating circumstances can be defined as those circumstances which tend to make you believe that this man should be put to death rather than given life imprisonment. On the other side of the coin is the mitigating circumstances. Mitigating circumstances will -- at least, the Defense will have the opportunity, if they feel any additional evidence is required or desired, to show you what's called mitigating circumstances. Here, again, from a general viewpoint, you can

assume that mitigating circumstances are those circumstances which tend to make you believe that this man should be given life rather than put to death in the electric chair.

Anything further that the State feels that I should caution the Jury about?

MR. OLDHAM: No, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: No, sir.

\* \* \*

PROSECUTOR'S CLOSING ARGUMENT

[1476]

The opinion of yours is advisory. Be fair and impartial to this Defendant and also to the people to the State of Florida. If you think the aggravating circumstances outweigh the mitigating, you know how to vote. If you think there's more mitigation than there is aggravating, you know the way to vote. Any way you people decide will satisfy the State of

Florida.

\* \* \*

INSTRUCTION TO THE JURY

[1479-1487]

THE COURT: Ladies and gentlemen of the Jury, it is now your duty to advise the Court as to what punishment should be imposed upon the Defendant for his crime of first degree murder. As you have been told, the final decision as to what punishment should be imposed is the responsibility of the Judge. However, it is your duty to follow the law which will now be given to you by the Court and render to the Court an advisory sentence based upon your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty and whether sufficient mitigating circumstances exist to outweigh any aggravating circumstances found to exist.

Your verdict should be based upon the evidence which has been presented to you in these proceedings.

The aggravating circumstances which you may consider are limited to such of the following as may be established by the evidence: (A), that the crime for which the Defendant is to be sentenced was committed while the Defendant was under sentence of imprisonment; (B), that at the time of the crime for which he is to be sentenced, the Defendant had been previously convicted of another capital offense or of a felony involving the use or threat of violence to some person; (C), that the Defendant, in committing the crime for which he is to be sentenced, knowingly created a great risk of death to many persons; (D), that the crime for which the Defendant is being sentenced was committed while the Defendant was engaged in the commission of an attempt to commit

or flight after committing or attempting to commit any robbery, rape, arson, burglary, kidnapping, aircraft piracy, or the unlawful throwing, placing or discharging of a destructive device or bomb; (E), that the crime for which the Defendant is to be sentenced was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody; (F), that the crime for which the Defendant is to be sentenced was committed for pecuniary gain; (G), that the crime for which the Defendant is to be sentenced was committed to disrupt or hinder the lawful exercise of any Governmental function or the enforcement of laws; (H), that the crime for which the Defendant is to be sentenced was especially heinous, atrocious or cruel.

Heinous means extremely wicked or shockingly evil.

Atrocious means outrageously wicked



and vile.

Cruel means designed to inflict a high degree of pain, utter indifference to or enjoyment of the suffering of others; pitiless.

In considering these aggravating circumstances, you must not consider any physical change in the body of the victim after death.

Where two or more aggravating circumstances refer to the same aspect of the crime, you shall consider them as constituting only one aggravating circumstance.

If you do not find that there existed sufficient of the aggravating circumstances which have been described to you, it will be your duty to recommend a sentence to life imprisonment.

Should you find sufficient number of these aggravating circumstances to exist, it will then be your duty to determine



whether or not sufficient mitigating circumstances exist to outweigh the aggravating circumstances found to exist. The mitigating circumstances which you may consider, if established by the evidence, are these: (A), that the Defendant has no significant history of prior criminal activities; (B), that the crime for which the Defendant is to be sentenced was committed while the Defendant was under the influence of extreme mental or emotional disturbance; (C), that the victim was a participant in the Defendant's conduct or consented to the act; (D), that the Defendant was an accomplice in the offense for which he is to be sentenced but the offense was committed by another person and the Defendant's participation was relatively minor; (E), that the Defendant acted under extreme duress or under the substantial domination of another person; (F), the

capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; (G), age of the Defendant at the time of the crime.

The aggravating circumstances which you may consider are limited to those upon which I've just instructed you. However, there is no such limitation upon the mitigating factors which you may consider.

Aggravating circumstances must be established beyond a reasonable doubt before they may be considered by you in arriving at your decision. Proof of an aggravating circumstance beyond a reasonable doubt is evidence by which the understanding, judgment and reason of the Jury are well satisfied and convinced to the extent of having a full, firm and abiding conviction that the circumstance has been proved to the exclusion of and beyond a reasonable doubt.

Evidence tending to establish an aggravating circumstance which does not convince you beyond a reasonable doubt of the existence of such circumstance at the time of the offense should be wholly disregarded.

If one or more aggravating circumstances are established, you should consider all the evidence tending to establish one or more mitigating circumstances and give that evidence such weight as you feel it should receive in reaching your conclusion as to the sentence which should be imposed.

The sentence which you recommend to the Court must be based upon the facts as you find them from the evidence and the law given to you by this Court. Your verdict must be based upon your finding of whether sufficient aggravating circumstances exist and whether sufficient mitigating circumstances exist which

outweigh any aggravating circumstances found to exist.

In determining whether to recommend life imprisonment or death, the procedure you are to follow is not a mere counting process of "x" number of aggravating circumstances and "y" number of mitigating circumstances, but rather you are to exercise a reasoned judgment as to what factual situations require the imposition of death and which situations can be satisfied by life imprisonment in light of the totality of the circumstances present.

Based on these considerations, you should advise the Court whether the Defendant should be sentenced to life imprisonment or to death.

In these proceedings, it is not necessary that the verdict of the Jury be unanimous but a verdict may be rendered upon the finding of a majority of the Jury.

The fact that the determination of whether or not a majority of you recommend a sentence of death or sentence of life imprisonment in this case can be reached by a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you ballot you should carefully weigh, sift and consider the evidence, and all of it, realizing that human life is at stake, and bring to bear your best judgment upon the sole issue which is submitted to you at this time: Whether a majority of your number recommend that the Defendant be sentenced to death or to life imprisonment.

Should a majority of the Jury determine that the Defendant should be sentenced to death, you should recommend an advisory sentence as follows: "A majority of the Jury advise and recommend to the Court that it impose the death

penalty upon the Defendant, Aubrey Dennis Adams, Jr."

On the other hand, if , after considering all the law and the evidence touching upon the issue of punishment, a majority of the Jury determine that the Defendant should not be sentenced to death, then you should render an advisory sentence as follows: "A majority of the Jury advise and recommend to the Court that it impose a sentence of life imprisonment upon the Defendant, Aubrey Dennis Adams, Jr."

The law requires that seven or more members of the Jury agree upon any recommendation advising either the death penalty or life imprisonment. You will now retire to consider your recommendation, and when seven or more are in agreement as to what sentence should be recommended to the Court, that form of recommendation should be signed by your

foreman and returned into Court.

\* \* \*

**ADVISORY SENTENCING RECOMMENDATION**

[1492-1493]

THE CLERK: Advisory sentence. A majority of the Jury advise and recommend to the Court that it impose the death penalty upon the Defendant, Aubrey Dennis Adams, Jr. Dated this 27th day of October, 1978. George H. Long, Foreman.

THE COURT: You may be seated.  
(Thereupon the Defendant resumed his seat).



IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 86-3207

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AUBREY DENNIS ADAMS, JR.,  
Petitioner-Appellant,

versus

RICHARD L. DUGGER,  
ROBERT A. BUTTERWORTH,  
Respondents-Appellees.

- - - - -  
Appeal from the United States District  
Court for the Middle District of Florida  
- - - - -

ON SUGGESTION FOR REHEARING EN BANC  
FILED JUNE 10, 1987

(Opinion November 13, 11 Cir.,  
1986 \_\_F.2d\_\_)

Before RONEY, Chief Judge, FAY and  
JOHNSON, Circuit Judges.

PER CURIAM:

No member of this panel nor other  
Judge in regular active service on the  
Court having requested that the Court be  
polled on rehearing en banc (Rule 35,  
Federal Rules of Appellate Procedure;

Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is DENIED.

[JURAT OMITTED IN PRINTING]